## **EXHIBIT "I"**



Tax and Transactional Estate Planning and Administration Real Estate

Daniel I. Ward, Esq. LLM in Taxation Licensed in New Jersey. Pennsylvania & Florida

Katie L. Pennell, Esq. Licensed in New Jersey & Pennsylvania

Denise A. Kahn, Estate Paralegal

Michelle A. Parker, Tax Paralegal

Mary A. Pomykacz, Real Estate Paralegal

February 8, 2021

## Via Email laurensassano@njcourts.gov & Overnight Delivery

Beach Haven Borough Municipal Court 300 Engleside Avenue Beach Haven, NJ 08008 Attn: Municipal Clerk

RE: State vs. Michael J. Ward

Complaint No. SC 2020 010537

Defendant's Motion to Dismiss Plaintiff's Complaint

Dear Clerk:

Please be advised that this office represents Michael J. Ward with regard to the above-referenced matter. Enclosed herewith for filing with the Court is an original and two (2) copies of the following documents:

- 1. Defendant's Notice of Motion to Dismiss Plaintiff's Complaint;
- 2. Supporting Certification of Michael J. Ward; and
- 3. Proposed form of Order.

Kindly file same and forward a stamped filed copy to this office in the enclosed self-addressed stamped envelope.

Thank you for your courtesy and accommodation in this matter.

Sincerely,

Daniel I Ward

DIW/dak Enclosures

cc: Honorable Stacey D. Kerr

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Steven Zabarsky, Esquire, Municipal Prosecutor (Via Email - chzsrealestate@comcast.net)

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Attorney for Defendant, Michael J. Ward

STATE OF NEW JERSEY [Borough Of: Beach Haven]

MUNICIPAL COURT OF BEACH HAVEN BOROUGH

Plaintiff

Complaint No. SC 2020 010537

v.

MICHAEL J. WARD

NOTICE OF MOTION FOR ENTRY

OF ORDER DISMISSING

Defendant

MUNICIPAL COURT COMPLAINT

TO: Honorable Stacey D. Kerr 300 Engleside Avenue Beach Haven, NJ 08008

> Steven Zabarsky, Municipal Prosecutor Citta, Holzapfel & Zabarsky 248 Washington Street Toms River, NJ 08753

PLEASE TAKE NOTICE that the undersigned attorney for Defendant, Michael

J. Ward in the above-captioned matter, is on this day moving before the Honorable Stacey D. Kerr, for entry of an Order dismissing the Municipal Court Complaint which was filed against the Defendant Michael J. Ward, on or about September 30, 2020.

In support of Defendant's motion, counsel shall rely upon the enclosed Certification of Michael J. Ward and the exhibits attached thereto. In addition, if directed by the Court, counsel for the Defendant/Movant shall orally present his application to the Court, pursuant to R. 7:7-2(a), on the date established by the Court for its consideration.

## **CERTIFICATION**

On February 8, 2021, I caused a copy of Defendant's Notice of Motion to Dismiss Plaintiff's Complaint, supporting Certification of Michael J. Ward and proposed form of Order, to be forwarded for filing with the Court, via email/overnight delivery to the Clerk of Beach Haven Municipal Court, a copy to the Honorable Stacey D. Kerr, Beach Haven Municipal Court and a copy to Steven Zabarsky, Beach Haven Municipal Prosecutor.

Attorney for Defendant

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Attorney for Defendant Michael J. Ward

STATE OF NEW JERSEY [Borough Of

Beach Haven]

MUNICIPAL COURT OF BEACH HAVEN BOROUGH

Plaintiff

Complaint No. SC 2020 010537

v.

CERTIFICATION OF MICHAEL J. WARD, ESQUIRE IN SUPPORT

MICHAEL J. WARD

OF MOTION TO DISMISS

Defendant

MUNICIPAL COURT COMPLAINT

## I, MICHAEL J. WARD, of full age hereby certifies as follows:

- 1. I am an attorney-at-law admitted to practice in the State of New Jersey. I now make this Certification in support of my Motion To Dismiss the Municipal Court Complaint that was filed against me. I am fully familiar with all of the facts set forth herein.
- 2. By way of background, for almost thirty (30) years, I have specialized in municipal law and land use matters, and have been a featured speaker at several Joint Insurance Fund Seminars concerning municipal tort claims. I am a Trustee of the Camden County Bar Association, and Chairperson of the Burlington County Bar Association General Equity Committee and Real Estate Committee. Since May 2020, I have served as the Director Of Community Development in Waterford Township, Camden County, New Jersey. [A copy of my professional resume is attached hereto as Exhibit "A"].

- 3. In June 1999, my wife Margaret and I purchased our second home, a single family residence at 408 Centre Street in Beach Haven Borough.
- 4. Since then, our family and friends have been the exclusive occupants of the house. It has never been used for any commercial purpose, and has never been rented at any time to anyone.
- 5. As the Court can observe from a review of our property survey [a copy of which is attached as Exhibit "B"] our property does not abut, nor is it adjacent, to the municipal sidewalk. Rather, our property line is located approximately twelve (12) feet from the closest edge of the concrete sidewalk. Between our property and the municipal sidewalk is a municipal grassy lawn area which measures approximately forty (40) feet by twelve (12) feet. This grassy area is regularly moved and maintained by my wife and me.
- 6. In or around 2001, I observed that a section of the municipal sidewalk appeared to be "seizing" upwards, due to roots from a red cedar tree which was immediately adjacent to the sidewalk in the municipal grassy lawn area, that appeared to be undermining the sidewalk pavement.
- 7. Because my wife had indicated that she was interested in teaching my oldest daughter (then about six (6) years old) how to roller skate, and the municipal sidewalk out in front of our house was "bumpy", I attended a Beach Haven Borough Council meeting, and spoke with the Municipal Clerk about my concerns regarding the condition of the municipal sidewalk. At that time, I was informed that Beach Haven Borough was planning on performing improvements to the curb, driveway aprons and sidewalks along Centre Street "on an as needed basis". I went home and reported the news to my wife.

- 8. Sometime afterwards (I believe around 2005), Beach Haven did replace the street curbing and some of the driveway aprons along Centre Street, but the Borough never addressed the deteriorating municipal sidewalk.
- 9. In a 2009 letter that I wrote to our insurance company, I noted that we had been waiting for sometime for the Borough to repair the municipal sidewalk. The repairs never happened. [See attached Exhibit "C"].
- 10. After the occurrence of "Super Storm Sandy" in October 2012, I noticed that the physical condition of the sidewalk seemed to be further deteriorating, and I mentioned the sidewalk condition to a woman in the Borough's offices, which were then located on Pelham Avenue. However, nothing was done by the Borough to repair the municipal sidewalk.
- 11. Sometime between 2016, the red cedar tree that had seemed to be undermining the municipal sidewalk was removed by the Borough, but no further efforts were made to fix the sidewalk's condition.
- 12. In October 2018, during the Chowderfest Weekend, I was pulling weeds in our garden and observed a young lady who was pushing a stroller, encounter difficulty pushing the strolling over the buckled municipal sidewalk. I therefore wrote a letter to the Borough and ask that they consider replacing or repairing the unsafe municipal sidewalk. I specifically noted at that time that the municipal sidewalk was not our property, and that I were concerned about the well-being of visiting pedestrians. [A copy of my October 2018 letter to Beach Haven is attached hereto as Exhibit "D"]. However, the municipal sidewalk repairs never happened.

- 13. I was therefore quite perplexed to receive a letter from Beach Haven Code
  Enforcement Officer Patrick O'Donnell in June 2020, informing us that the sidewalk "in front of
  [our house] is in need of repair". [See attached Exhibit "E"].
- 14. In response, I wrote a letter (sent certified mail) to Mr. O'Donnell, and informed him of my "history" regarding requested repairs to the municipal sidewalk, and specifically noted that I had been informed by a Beach Haven Borough official almost twenty (20) years earlier that Beach Haven intended to make repairs to the municipal sidewalk. I further confirmed that the municipal sidewalk was "not" located on our property, but rather was located approximately twelve (12) feet away from our front property line. [See attached Exhibit "F"].
- 15. I received confirmation that Mr. O'Donnell received my reply letter in June (sent certified mail) so about two weeks later, I followed up with a telephone call to him to discuss the matter.
- 16. At that time, Mr. O'Donnell acknowledged my letter, and stated that he had referred the matter to the Beach Haven Borough Attorney for review. He stated that he believed that the matter was best resolved "between you two attorneys".
- 17. Between June 2020 and early October 2020, I heard nothing more about the matter, and was never contacted by either Mr. O'Donnell or by the Borough Attorney. I was therefore greatly surprised to receive a Municipal Court Summons in October 2020, dated September 30, 2020 that required me to appear in Beach Haven Municipal Court because of a failure to repair or replace the municipal sidewalk.
- 18. Upon further investigation, I learned that Beach Haven had recently amended its Municipal Code [by Ordinance effective September 15, 2020] to require "abutting" property

owners "to reconstruct or repair the sidewalk or a portion thereof within thirty (30) days after the service" of notice from the Code Enforcement Officer. [See attached Exhibit "G"].

- 19. As I had previously informed Mr. O'Donnell and various officials of Beach Haven, our residential property is not adjacent to, nor does it abut, the municipal sidewalk, and we are not willing to undertake the responsibility (and incur the potential liability) that could result to my wife and I, as private property owners, if I was to make infrastructure repairs or improvements to <u>municipal</u> public property.
- 20. Inasmuch as our residential property is neither adjacent nor abutting the municipal sidewalk, my wife and I are not responsible for repairing or replacing the municipal sidewalk, and I respectfully request that the Complaint against me be dismissed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Date: Teleny 8, 2021

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